IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5853 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MB FARSHORI - Petitioner(s)
Versus
UNION OF INDIA & 3 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR JJ YAJNIK for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
NOTICE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate order quashing and setting aside the

order of penalty as confirmed by the Appellate Authority. He has further prayed for an appropriate order directing the respondents to treat the period of suspension from 07.10.1985 to 13.01.1992 as on duty for all purposes and to pay the petitioner full pay and allowances for the said period.

2. Shri Supehia, learned Advocate appearing on behalf of the petitioner does not press the prayer at Para 22(A) i.e. for quashing and setting aside the order of penalty as confirmed by the Appellate Authority, restricting the present petition for treating the period of suspension from 07.10.1985 to 13.01.1992 for all purposes and to pay the petitioner full pay and allowances for the said period.

3. Shri Supehia, learned Advocate appearing on behalf of the petitioner has vehemently submitted that initially the order for removal was passed, however, in appeal the same was modified and the minor penalty was imposed. The period during which the petitioner was under suspension i.e. the period from 07.10.1985 to 13.01.1992 is required to be

regularized as on duty for all purposes and the petitioner is entitled for full pay and allowances. In support of his above submission, he has relied upon the Circular No.106/36/E/DAR/308/1417 dated 24.04.1986, Annexure “L” to this petition and submitted that as per the said Office Memorandum, departmental proceedings against the suspended employee for imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR (54-B).

4. Shri Yagnik, learned Advocate appearing on behalf of the respondent has submitted that initially a penalty of removal from service was imposed however, in appeal the same was reduced to reduction of pay, which can be said to be a minor penalty. However, the department is required to take an appropriate decision and to reconsider the decision in light of the Office Memorandum dated 24.04.1986, Annexure “L” to this petition.

5. Under the circumstances, so far as the period of

suspension i.e. the period from 07.10.1985 to 13.01.1992 is concerned, the respondents are required to take an appropriate decision in light of the Office Memorandum, Annexure “L” to this petition dated 24.04.1986 and to consider whether the said period is to be regularized for all purposes or not.

6. Under the circumstances, the respondents are directed to take an appropriate decision in accordance with law and on merits in light of the Office Memorandum, Annexure “L” to this petition dated 24.04.1986 for treating the period of suspension i.e. the period from 07.10.1985 to 13.01.1992 as on duty and the same is required to be completed within a period of six weeks from the date of receipt of this order and to communicate the outcome to the petitioner and if, ultimately, it is found that the said period is required to be regularized, the petitioner should be given all consequential benefits, within a period of six weeks thereafter.

7. With these directions, this petition is disposed

of. No costs. Direct service is permitted.

[M.R. SHAH, J.]

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